Affirmed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 214

JOHN B. BRAUN, PLAINTIFF IN ERROR,

vs.

PETER G. SAUERWEIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED MARCH 29, 1869.

SUPREME COURT OF THE UNITED STATES.

No. 447.

JOHN B. BRAUN, PLAINTIFF IN ERROR,

vs.

PETER G. SAUERWEIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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Charles Marshall, Robert I. Brent, attorneys for plaintiff.

A. S. Ridgely, R. I. Gittings, A. W. Machen, attorneys for defendant.

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday of November, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable William F. Giles, judge of Maryland district; Andred Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

Be it remembered that heretofore, to wit, on the 5th day of September, in the year of our Lord one thousand eight hundred and sixty-eight, in pursuance of the act of Congress in such case made and provided, the following transcript of record from the circuit court of Baltimore county was filed in the circuit court here, which is in form following, to wit:

STATE OF MARYLAND, *Baltimore County, to wit:*

2 At a circuit court for Baltimore county, begun and held in the court-house, in Towsentown, in said county, on the third Monday in May, in the year eighteen hundred and sixty-eight, the same being the eighteenth day of the month, said county being comprised within the third judicial circuit of said State, were present—

The Honorable Richard Grason, chief judge.
" " George Yellott, } associate judges.
" " A. W. Bateman, }
Thomas Baldwin, esquire, sheriff.
Edward H. Ady, clerk.

Among other were the following proceedings, to wit:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

Be it remembered, that heretofore, to wit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, the said John B. Braun, by C. Marshall, esquire, his attorney, filed in court here the following order, to wit:

Mr. ADY: Issue in this case and send copy of the narr. and rule to be served on the defendant.

C. MARSHALL, *For Pl'ff.*

1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday of November, (being the second day of the same month,) in the year of our Lord one thousand eight hundred and sixty-eight.

Present, the Honorable William F. Giles, judge of Maryland district; Andred Sterett Ridgely, esquire, attorney; Washington Bonifant, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

Be it remembered that heretofore, to wit, on the 5th day of September, in the year of our Lord one thousand eight hundred and sixty-eight, in pursuance of the act of Congress in such case made and provided, the following transcript of record from the circuit court of Baltimore county was filed in the circuit court here, which is in form following, to wit:

STATE OF MARYLAND, *Baltimore County, to wit:*

2 At a circuit court for Baltimore county, begun and held in the court-house, in Towsentown, in said county, on the third Monday in May, in the year eighteen hundred and sixty-eight, the same being the eighteenth day of the month, said county being comprised within the third judicial circuit of said State, were present—

The Honorable Richard Grason, chief judge.
" " George Yellott, } associate judges.
" " A. W. Bateman, }
Thomas Baldwin, esquire, sheriff.
Edward H. Ady, clerk.

Among other were the following proceedings, to wit:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

Be it remembered, that heretofore, to wit, on the eighteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, the said John B. Braun, by C. Marshall, esquire, his attorney, filed in court here the following order, to wit:

Mr. ADY: Issue in this case and send copy of the narr. and rule to be served on the defendant.

C. MARSHALL, *For Pl'ff.*

And the writ of summons issued accordingly, to wit:

BALTIMORE COUNTY, *to wit*:

3 The State of Maryland to the sheriff of Baltimore county, greeting:

[SEAL'S PLACE.] You are hereby commanded to summon Peter G. Sauerwein, of Baltimore county, to appear before the judge of the circuit court for Baltimore county, to be held at the court-house, at Towsentown, in and for the same county, on the first Monday of March, 1868, to answer an action at the suit of John B. Braun, and have you then and there this writ.

Witness the Honorable Richard Grason, chief judge of the said court, the nineteenth day of February, in the year of our Lord one thousand eight hundred and sixty-eight.

EDWARD H. ADY,
Clerk of the Circuit Court for Baltimore County.

And the said John B. Braun, by his attorney aforesaid, on the day of prosecuting and suing forth the foregoing writ, declares against the said Peter G. Sauerwein in the plea aforesaid in form following, to wit:

3rd judicial circuit of Maryland, in the circuit court of Baltimore county.

BALTIMORE COUNTY, *to wit*:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

John B. Braun, of Baltimore city, plaintiff, by Allan B. Magruder and Hughes, Denver & Peck, his attorneys. sues Peter G. Sauerwein, defendant, of the said county, for that the said plaintiff was, on
4 the day of February, A. D. 1864, the owner & occupier of a valuable & extensive tobacco store and factory, situate at No. 181 West Pratt street, in said city, and was then and there conducting, with great success and profit, the business of a dealer, manufacturer, and seller of tobacco, and for that purpose had on hand moveable property and fixtures necessary and fit for his business aforesaid of great value, and all the books and papers of said plaintiff, to wit, of the value of dollars, &c.

1. For that the said defendant, well knowing the premises, and contriving and intending maliciously & unlawfully to defraud & injure the said plaintiff, entered upon the said store and factory so occupied by him as aforesaid, and unlawfully and without & against the consent of the said plaintiff took & carried away a large quantity of valuable goods, the property of said plaintiff, to wit: 5,000 boxes of manufactured tobacco, 5,000 boxes of segars, 5,000 pounds

of snuff, and 20,000 pounds of loose tobacco in the leaf and in stems, & various & sundry articles of furniture, books, papers, and accounts, and tools & utensils of his trade and business, of great value, to wit, of the value of dollars, & deprived the plaintiff of the possession of and wrongfully converted the same to his (defendant's) own use.

2. And for that the said defendant, on the day and year aforesaid, and in the city aforesaid, under the color of his office as collector of the United States internal revenue for the 3rd district of Maryland, well knowing the premises, and contriving and intending maliciously to defraud and injure the said plaintiff in that behalf, did, by himself or his deputy in said office, wilfully inflict and exercise extortion and oppression upon the said plaintiff, in violation of his duty as aforesaid, and of the act of Congress in that case made and provided, by knowingly and unlawfully demanding & obtaining of & from said plaintiff a large sum of money, to wit, the sum of twenty-five thousand dollars, ($25,000.)

3. And for that the said defendant, under color of his said office as collector of the U. S. internal revenue in the 3rd district of Maryland, on or about the day of November, in the year 1863, in the city aforesaid, unlawfully & maliciously seized a large quantity of valuable goods, the property of said plaintiff, to wit: boxes of manufactured tobacco, boxes of segars, & pounds of snuff, & & pounds of loose or leaf tobacco of great value, to wit, of the value of twenty thousand dollars, & deprived the said plaintiff of the possession of the same, & sold & converted the same to his (said defendant's) own use, contrary to the act of Congress in that case provided. And the plaintiff claims one hundred thousand dollars.

4. For that the said defendant, under color of his office as collector of U. S. internal revenue in 3rd district of Maryland, gave the plaintiff into the custody of a deputy U. S. marshal, on the day and year first aforesaid, & in the city aforesaid, and caused him to be unlawfully arrested & detained, & unjustly deprived of his liberty, contrary to the act of the U. S. Congress in that case provided, and other wrongs & injuries did to the said plaintiff. And the said plaintiff claims one hundred thousand dollars. ($100,000.)

CHARLES MARSHALL,
ALLAN B. MAGRUDER,
HUGHES, DENVER & PECK,
Atty's for Pl'ff.

To which said declaration was attached the following notice to defendant, to wit:

To P. G. Sauerwein, esq., defendant:

Take notice that on the day of your appearance to this action in Baltimore (county) circuit court, a rule will be entered requiring you to plead to the said declaration within fifteen days thereafter.

C. MARSHALL,
Plaintiff's Att'y.

At which mentioned first Monday of March, to wit, in the year last aforesaid, being the day of the return of the foregoing writ, comes into the circuit court here the said John B. Braun aforesaid, and the sheriff of Baltimore county aforesaid; and the sheriff
7 of Baltimore county, to wit, Thomas Baldwin, esq., to whom the foregoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit: "Summoned; copy left. Thos Baldwin, sher'ff."

And the said Peter G. Sauerwein, by R. I. Gittings, esq., his attorney, appears in court here, and thereupon the said John B. Braun, by his attorneys aforesaid, prays that the said Peter G. Sauerwein may answer to the declaration of him, the said John B. Braun, to the plea aforesaid.

Whereupon it is ruled by the court here that the said Peter G. Sauerwein answer to the declaration of the said John B. Braun in the plea aforesaid, or judgment will be rendered against him by default.

Whereupon, to wit, on the thirty-first day of March, in the year of our Lord one thousand eight hundred and sixty-eight, the said Peter G Sauerwein, by his attorney aforesaid, filed in court here the following plea, to wit:

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

The defendant, Peter G. Sauerwein, by R. I. Gittings, his attorney, by way of plea, says:

1. That he did not commit the wrongs alleged.

2. And for a second plea he says that the alleged cause of action did not occur within three years before this suit.

R. I. GITTINGS, *For D'f't.*

8 And also, on the same day and year last aforesaid, the said Peter G. Sauerwein, by Andrew S. Ridgely, esquire, his attorney, filed in said court here the following plea, to wit:

In the circuit court of Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And now comes the defendant, Peter G. Sauerwein, by his attorney, Andrew Sterett Ridgely, and says:

That he did not commit the wrongs alleged.

That he is not guilty of the said supposed grievances in the plaintiff's declaration, and in the various counts thereof laid to his charge, or any or either of them, in manner and form as the said plaintiff hath therein complained against him; and of this he puts himself upon the country.

And for a further plea to the plaintiff's declaration, and to the 1st and 3rd counts thereof, the defendant, by his attorney aforesaid, says that at and before the time alleged in said *county* [court] as the time of the committal of the several wrongs and grievances therein complained of, the said plaintiff was a manufacturer of tobacco in Baltimore city, within the third collection district of the State of Maryland for which district the defendant was then and there the duly appointed United States collector of internal revenue. That said plaintiff being then and there a manufacturer as aforesaid, under the name and style of H. Wilkens & Co., failed to make full and true
9 returns of his products and sales of tobacco manufactured by him, as he was by the laws of the United States required to do. Whereupon it became the duty of the defendant, as collector as aforesaid, on account and by reason of said unlawful failure to cause the goods and merchandise, to wit, certain manufactured tobacco, manufactured and unsold by said John B. Braun, trading as H. Wilkens & Co., as aforesaid, to be seized, which was accordingly by the said defendant done through his deputy, Leonidas Mearis. That thereupon, to wit, on the 21st Nov., 1863, the defendant duly summoned, in accordance with the statue of the United States in such case made and provided, the said plaintiff to appear before the U. S. assessor for said district, to wit, before Wm. E. Beale, on the 24th day of November, 1863, at one o'clock, p. m. of said day, at said assessor's office, No. 99 Baltimore st., in the city of Baltimore, then and there to shew cause why for his, said plaintiff's, violation of the excise law of the United States as aforesaid, the merchandise manufactured and unsold as aforesaid, seized by said defendant, under the act of Congress in such case made and provided, a description whereof was annexed to said summons, should not be declared forfeited to the United States. That said summons was served upon the said John Braun by said Leondas Mearis, deputy collector of said
10 district, on the 21st day of November, 1863, and was returned to the said defendant, collector, as aforesaid, with the following return thereon, to wit: "Summons served and goods seized to the amount of $1,832 25." That the said plaintiff, in response to said summons at the time and place mentioned therein, duly *approved* [appeared] before the said assessor by whom the said summons, service, and return were by the said assessor adjudged sufficient, as required by law, and the said manufactured tobacco declared forfeited to the United States. That thereafter, to wit, on the 28th day of November, 1863, notice was duly given by the defendant, by daily publication in the Sun and American, two newspapers of the city of Baltimore, that the said merchandise would be sold on the 11th day of December following, at public auction, in said city, the hour and place being also given. That on the day last named, at the time and place designated, the said merchandise was sold, in accordance with said advertisement, for the sum of $1,153 29, which said seizure, sale, and other acts set forth in this plea as done by this defendant, was so done by him in the lawful discharge of his duty as collector of said district, in form and for the cause aforesaid, are the same supposed

entry upon the store & factory, as portations, dispossession, and conversion, seizure, wrongs, and other grievances, complained of by the said plaintiff in his said declaration and the 1st and 3rd
11 counts thereof. Without this that the defendant contriving and intending maliciously and unlawfully to defraud and injure the said plaintiff. entered upon his store an factory as occupied by him as aforesaid, and unlawfully and without and against his consent, took and carried away a large quantity of valuable goods, the property of the plaintiff, to wit, the goods set forth in the 1st and 3rd counts of the said delaration, or any other wrongs or trespasses to or against the said plaintiff, committed at any time whatsoever other than at the time, and on the occasion set forth and stated in this plea. And this he is ready to verify. Wherefore he prays judgment if the said plaintiff, his actions aforesaid for the causes, or any of them, in his said delaration in the 1st and 3rd counts thereof to have and maintain ought?

And for a further plea to the plaintiff's declaration and to the second count thereof, the defendant, by his attorney aforesaid, says that at and before the time of the alleged committ*ed*[al] of the grievances in said 2nd count complained of, a certain Wm. E. Beale was United States assessor for the 3rd collection district of Maryland, and the defendant was collector for said district. That on the 20th day of January, 1864, the said assessor transmitted to the said collector, as he was by law required to do, his monthly list of assessments for December, 1863, wherein the said John B. Braun,
12 under the name and style of H. Wilkens & Co., was assessed in the sum of eighteen thousand nine hundred and seventy-three dollars and five cents, which list, as the law required, was duly receipted for by said defendant, whereby he became chargeable with the amount aforesaid, and was required by law to collect the same from the plaintiff. That upon the notification thereof, the plaintiff did, on the 2nd day of February, 1864, voluntarily, by his counsel, Wm. Frick, esq., come forward and pay the same; and that the acts of the said defendants, as in the plea set forth, done by him in the due execution of his office as collector, are the same as the alleged wrongs, extortion, and aggression, and other grievances, whereof the said plaintiff in the 2nd count of his said declaration against this defendant hath complained. Without this, that the said defendant is guilty of any other wrong or wrongs, trespass, extortion, or oppression to or upon the said plaintiff at any time whatsoever; and this he is ready to verify. Wherefore he prays judgment if the plaintiff his action aforesaid for the causes in the 2nd count of his delaration to have and maintain ought.

And the said defendant further defends and saith that the said John B. Braun, his actions aforesaid against the said defendant to have and maintain ought not, because he saith that he is not guilty of the trespasses or wrongs aforesaid, or any one of them, at
13 the time within two years next before the suing forth the original writ in this cause in manner and form as the said John B. Braun hath above against him, the defendant, complained; and this he is ready to verify, and prays the court's judgment thereon.

And the defendant, by his attorney aforesaid, further saith, that the causes of action in the said declaration alleged, nor did either or any of them, accrue within three years before this suit.

And the defendant, by his said attorney, with leave of the court, according to the form of the statue in that case made and provided, further defends the force and injury when, and so forth, and saith that the said John B. Braun, his action aforesaid thereof against him, the said defendant, to have and maintain ought not, because he saith that the original writ of the said John B. Braun in this cause was imputrated on the 18th day of February, in the year eighteen hundred and sixty-eight, and not before; and that the said Peter G. Sauerwein at any time within three years next before the imputration of the said writ was not guilty of the trespasses and wrongs, or either, or any of them, above charged to him as the said Braun above thereof against him hath complained, and this he is ready to verify. Wherefore he prays judgment of the said Braun to have or maintain his action thereof against him.

And for a further plea to the second count of said declaration
14 the defendant saith, that the said circuit court of Baltimore county hath no jurisdiction over the matter and claim of the plaintiff in manner and form as therein set forth. Because he saith, it is an action to recover a statutary penalty under a statue of the United States, whereof a court of the State of Maryland can not entertain suit, but the same should have been brought in a court of the United States. Whereof the defendant prays judgment, &c.

AND'W. STERITT RIDGELY.
Att'y for Def't.

Which said pleas are thus endorsed, to wit: "Service of copy of these pleas admitted March 31st, 1868. Allan B. Magruder, A. H. Handy, of counsel for pl'ff."

And thereupon the said Peter G. Sauerwein, by his attorneys aforesaid, prays that the said John B. Braun may reply to the pleas of the said Peter G. Sauerwein in the action aforesaid. Whereupon it is ruled by the court here, that the said John B. Braun reply to the pleas of the said Peter G. Sauerwein in the action aforesaid, or judgment will be rendered against him by default.

And afterwards, to wit, on the second day of April, in the year last aforesaid, the said John B. Braun, by A. B. Magruder, A. H. Handy, & Charles A. Marshall, esquires, his attorneys, pray leave of the court here to amend his aforesaid declaration, and to him leave is granted.

15 And afterwards, to wit, on the day and year last aforesaid, the said John B. Braun, by his attorneys aforesaid, files in court here his amended declaration, in the words and tenor following, to wit:

Third judicial district of the State of Maryland, in the circuit court of Baltimore county.

John B. Braun, of the city of Baltimore, in said State, by Allen B. Magruder and A. H. Handy, his attorneys, by way of amendment to

his original declaration, filed in this cause in said court, and by leave of the court first had and obtained, sues Peter G. Sauerwein, defendant, of the said county, for that whereas heretofore, to wit, on the day of February, in the year eighteen hundred and sixty-four, the said plaintiff owned and had in his possession a large and valuable tobacco storehouse and factory of tobacco, situate at No. 181 West Pratt street, in said city, of great value, to wit, of the value of twenty-five thousand dollars; and in and upon said premises the said plaintiff had, as his own property, a large amount of tobacco, to wit, five thousand boxes of manufactured tobacco, and five thousand pounds of snuff, and five thousand boxes of segars, and twenty thousand pounds of loose tobacco in the leaf and in the stem, and divers and various articles of furniture of his said trade and business, and of tools and utensils, and of books, papers, and accounts appertaining to the same, of great value, to wit, of the value
16 of the like sum of twenty-five thousand dollars; and whereas afterwards, to wit, on the day and year aforesaid, the said defendant, then holding the office of collector of internal revenue of the United States of America, in and for the third district of said State of Maryland, in which was included the said city of Baltimore, not regarding his duty as such collector, and under color of his officer as such collector, wrongfully, illegally, and oppressively had, received, seized, and took into his possession, and from the said plaintiff, the said storehouse and the said goods, chattels, and effects of said plaintiff under the color and pretext that the said plaintiff and his said property, goods, chattels, and effects were justly liable and due by the United States in a large sum of money, to wit, the sum of twenty-five thousand dollars for and on account of the aforesaid business and trade and stock of goods, wares, merchandise, and effects of said plaintiff, and for and on account of divers penalties, taxes, and dues alleged and pretended by said defendant to be then and there due and owing by said plaintiff to the United States, for and on account of divers liabilities and violations of law pretended by said defendant to have been suffered and committed by said plaintiff against the revenue laws of the United States in and about the business of said plaintiff, when in truth and in fact neither the said plaintiff nor his goods, chattels, effects, and property were in any wise liable to the payment of the said sum of money demanded of him as afore-
17 said; and the said plaintiff in fact says, that by reason of the demand of the said sum of money of him by said defendant, and by reason of the aforesaid illegal and oppressive acts of said defendant, the said plaintiff was then and there compelled to pay, and did pay, to said defendant a large sum of money, to wit, the sum of twenty-five thousand dollars, which said sum was then and there had and received by said defendant of and from the said plaintiff; by reason whereof the said defendant then and there became liable to pay to said plaintiff the said sum of twenty-five thousand dollars when thereto afterwards requested.

And whereas also, the said defendant afterwards, to wit, on the day and year aforesaid, was indebted to the said plaintiff in the further

sum of twenty-five thousand dollars for money had and received by said defendant to & for the use of said plaintiff; and also in the further sum of twenty-five thousand dollars, for so much money due and owing to said plaintiff on an account stated by and between said plaintiff and said defendant; and also in the further sum of twenty-five thousand dollars for so much money by the said plaintiff paid, laid out, and expended to and for the said defendant at his special instance and request; and being so indebted the said defendant, afterwards, to wit, on the day and year last aforesaid, undertook and promised to pay to said plaintiff the said several sums of money
18 in this count mentioned, when thereto afterwards requested.

Nevertheless the said defendant has not paid to said plaintiff the said several sums of money, or any part thereof, but thereto has wholly refused. Wherefore the said plaintiff claims and demands of said [said] defendant one hundred thousand dollars damages, and therefore he brings suit.

ALLAN B. MAGRUDER AND A. H. HANDY,
Attorneys for Plaintiff.

Whereupon the said John B. Braun, by his attorneys aforesaid, prays that the said Peter G. Sauerwein may answer to the amended delaration of him the said John B. Braun in the plea aforesaid, whereupon it is ruled by the cour there, that the said Peter G. Sauerwein answer to the plea aforesaid or judgment will be rendered against him by default.

And thereupon, to wit, on the sixteenth day of May, in the year last aforesaid, the said Peter G. Sauerwein, by his attorneys aforesaid, filed in court here the following plea to the said plaintiff's amended declaration, to wit:

In the circuit court for Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

1st. And the said defendant, by Andrew Steritt Ridgely and Richard I. Gittings, his attorneys, comes & defends the wrong and injury when, &c., and says, that he did not undertake or promise
19 in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

2. And for a further plea in this behalf the said defendant (by leave of the court here for this purpose first had and obtained) says, that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, because he says that the said defendant did not at any time within three years next before the commencement of this suit undertake or promise in manner and form as the said plaintiff hath above thereof complained against him. And this the said defendant is ready to verify, wherefore he prays judgment of the said plaintiff to have or maintain his aforesaid action against him ought, &c.

3. And for a third plea the said defendant says that he never promised as alleged.

4. And for a fourth plea the said defendant says that he never was indebted as alleged.

5. And for a fifth plea the said defendant says that the alleged cause of action did not accrue, nor did any or either of said causes of action accrue, within three years before this suit.

6. And for a sixth plea, the said defendant, as to the said first count of the declaration, saith that he did not wrongfully, illegally, or oppressively have, receive, seize, or take into his possession, the said storehouse or goods, chattels, and effects of the said plaint-
20 iff in manner or form as the plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the country, &c.

7. And for a seventh plea the said defendant, as to the first count, saith that the said plaintiff and his said goods, chattels, effects, and property, were liable to the payment of the said sum of money when, &c. And of this the said defendant puts himself upon the country.

8. And for a further (or 8th) plea to the said declaration, and to the said first count thereof, the said defendant says, that at and before the time of the said supposed grievance the said plaintiff was a manufacturer of tobacco in the city of Baltimore, within the third collection district of the State of Maryland, for which said district the said defendant was then and there the duly appointed United States collector of internal revenue, & that the said plaintiff being then and there a manufacturer as aforesaid, under the name and style of H. Wilkens & Co., failed to make full and true returns of his products and sales of tobacco manufactured by him, as he was by the laws of the said United States required to do; whereupon it became and was the duty of the said defendant, being collector as aforesaid, (on account and by reason of said unlawful failure,) to cause the goods and merchandise, to wit, certain manufactured tobacco, manufactured and sold by the said plaintiff, trading as H. Wilkens & Co., as aforesaid, to be seized, which was, accordingly, by the said
21 defendant, then and there collector as aforesaid, lawfully done; and that thereupon, to wit, on the 21st day of November, A. D. 1863, the said defendant, in accordance with the statue of the [the] said United States, in such case made and provided, duly summoned the said plaintiff to appear before the United States assessor for said district, to wit, before William E. Beale, esquire, being then and there such assessor, on the 24th day of November, A. D. 1863, at one o'clock of the afternoon of said day, at the said assessor's office, number ninety-nine Baltimore street, in the city of Baltimore aforesaid, then and there to show cause why for his the said plaintiff's said violation of the excise law of the United States the merchandize manufactured and unsold as aforesaid, seized as aforesaid, under the act of Congress in such case made and provided, a description whereof was annexed to said summons, should not be declared forfeited to the United States, as the said summons was duly served

upon the said defendant by a certain Lowndes Mearis, being then and there deputy collector of said district, to the said defendant, on the twenty-first day of November, A. D. 1863, and was returned to the said defendant, collector as aforesaid, with the following endorsement and return thereon, to wit: "Summons served, and goods seized to the amount of $1,832 25;" and the said plaintiff, in response to said summons, at the time and place mentioned therein, appeared before the said assessor, by whom, the said assessor, the said summons, service, and return, were adjudged sufficient as required
22 by law, and the said manufactured tobacco duty declared forfeited to the United States; and therefore, to wit, on the 28th day of November, A. D. 1863, notice was duly given by the defendant, by daily publication in the Sun and American, two newspapers published in the city of Baltimore aforesaid, that the said merchandize would be sold on the eleventh day of December following, at public auction, in said city, at a time and place so designated. The said merchandize, in accordance with said notice and advertisement, was sold for the sum of $1,153 29, at public auction; which said seizure, sale, and other acts set forth in this plea, as done by this defendant, were so done by him in the lawful and necessary discharge of his duty as assessor of said district as aforesaid, in form and for the cause aforesaid, and not otherwise, and this is the same seizure and taking possession of the storehouse, goods, chattels, and effects of the plaintiff and supposed grievance, whereof the plaintiff hath in his said declaration above complained; without this that the defendant at any time had received, seized, or took into his possession and from the plaintiff the said storehouse, goods, chattels, effects, or property of the plaintiff for any other cause, or in any other manner, or upon any other occasion. Wherefore the defendant prays judgment if the said plaintiff, his aforesaid action for the said cause to have or maintain ought, &c.

23 9. And for a ninth plea to the plaintiff's declaration, and to the said first count thereof, the said defendant says, that at and before the time of the alleged grievance a certain William E. Beale was United States assessor for the 3rd collection district of Maryland, and the defendant was United States collector for said district, and on the 20th day of January, A. D. 1864, the said Beale, being so assessor as aforesaid, submitted to the said defendant, being then and there so collector as aforesaid, as he, the said assessor, was by law required to do, his monthly lists of assessments for December, A. D. 1863, whenever the said plaintiff, under the name and style of H. Wilkens & Co., was assessed in the sum of eighteen thousand nine hundred and seventy-three dollars and five cents, which list, a- was required by law, was duly receipted for by the said defendants whereby he became chargeable with the amount aforesaid, and wa, required by law to collect the same from the said plaintiff; and theres upon, on notification thereof, the said plaintiff did, on the 2nd day of February, A. D. 1864, voluntarily, by his counsel, William F. Frick, esquire, come forward and pay the same; and the acts of the said defendant, as in this plea set forth and done by him in the due

execution of his office of collector as aforesaid, are the same supposed grievances and trespasses, and having, receiving, and taking into possession of the said storehouse, goods, chattels, effects, and property of the plaintiff, in his said declaration mentioned and complained of, and this he is ready to verify. Wherefore
24 he prays judgment of the said plaintiff, his action aforesaid to have and maintain ought, &c.

10. And for a tenth plea to the said declaration the said defendant says, that the plaintiff his action aforesaid against the said defendant to have and maintain ought not, because he saith the said supposed grievances were not, nor was any of them, committed, nor did the said cause of action nor any of the said causes of action set forth in the said declaration accrue, nor were any of the said supposed promises or assumptions made at any time within two years before the commencement of this suit in manner and form as the said plaintiff hath above against him, the said defendant, complained; and this he is ready to verify, &c.

11. And for an eleventh plea to the said declaration, the defendant defends the wrong and injury, &c., and says that the said plaintiff his aforesaid action against him to have and maintain ought not, because he saith the original writ of the said plaintiff in this cause was impetrated on the 18th day of February, in the year eighteen hundred and sixty-eight, and not before, and that the said defendant, at any time within two years next before the said impetration of said writ, did not undertake or promise in manner & form as the said plaintiff hath above thereof complained against him; which the said defendant is ready to verify. Wherefore he prays judgment
25 of the plaintiff to have and maintain his aforesaid action against him ought, &c.

AND'W STERITT RIDGELY,
RICHARD I. GITTINGS,
Defendant's Attorneys.

Whereupon the said defendant, by Richard I. Gittings, esquire, his attorney, files in court here the following demand for bill of particulars, to wit:

C. C., Balto. co.

BRAUN
vs.
SAUERWEIN.

The defendant demands a bill of particulars in this case.
R. I. GITTINGS, *For D'f't.*

And the said defendant filed in court here the following petition, to wit, (16 May, '68:)

To the Honorable Richard Grason, George Yellott, and Alfred W. Bateman, judges of the circuit court for Baltimore county:

The petition of Peter G. Sauerwein, of Baltimore county, and State of Maryland, respectfully represents that he is the defendant

in a certain suit or cause, commenced and instituted in your honorable court on the eighteenth day of February last to the March term of said court, eighteen hundred and sixty-eight, and now depending therein, in which cause a certain John B. Braun, of the city of Baltimore, and State aforesaid, is plaintiff; that at and during the time or times when the several alleged matters and things, wrongs,
26 trespasses, promises, and undertakings, set forth in the plaintiff's pleadings, filed in said cause, and therein alleged to have been done and made by this defendant, he, the said defendant, was a civil officer of the United States, to wit, the duly appointed collector of internal revenue in and for the third collection district of Maryland; that the said suit was commenced against this defendant for the alleged matters and things, wrongs, trespasses, promises, and undertakings aforesaid, alleged to have been done, made, and committed, at the time or times aforesaid, the same being during the rebellion referred to in the third section of the act of Congress, approved March the third, eighteen hundred and sixty-three, (to be found on page 756, ch. 81, XII Statues at Large,) by the said defendant, in his official character and capacity of collector as aforesaid, in the due exercise and discharge of the legal functions and duties of his said office, under color of authority derived from and exercised by said defendant under the act of Congress, entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July the first, eighteen hundred and sixty-two, (XII Statue at Large, page 432,) and amendments thereof.

Your petitioner, therefore, under and by virtue of the provisions of an act of Congress, entitled "An act relating to habeas
27 corpus and regulating judicial proceedings in certain cases," approved March the third, eighteen hundred and sixty-three, (XII Statue at Large, ch. 81, page 756,) prays your honors to allow the said cause against him to be removed for trial at the next circuit court of the United States to be holden in the district of Maryland, wherein the said suit is pending, upon his giving good and sufficient surety, such as this court may prescribe, for his filing in said circuit court, on the 1st day of its session, copies of the process and other proceedings against him.

And your petitioner will ever pray, &c.

P. G. SAUERWEIN.

Sworn before me, this 1st day of May, 1868.

W. H. HAYWARD, *J. P.*

STATE OF MARYLAND, *Baltimore City, ss:*

On this 1st day of May, 1868, before me, the subscriber, one of the justices of the peace of the State of Maryland, in and for the city of Baltimore, personally appears the above-mentioned P. G. Sauerwein, and made oath, on the Holy Evangely of Almighty God, that the above statement is just and true as stated.

W. H. HAYWARD, *J. P.*

[U. S. S. 5 cts.]

STATE OF MARYLAND, *Baltimore City, sct:*

I hereby certify that Wm. H. Hayward, esquire, before whom the annexed affidavit was made, and who has thereto subscribed
28 his name, was, at the time of so doing, a justice of the peace of the State of Maryland, in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I hereto set my hand and affix the seal of the superior court of Baltimore city, this 1st day of May, A. D. 1868.

[SEAL'S PLACE.] GEORGE ROBINSON,
Clerk of the Superior Court of Baltimore City.

Whereupon, to wit, on the twentieth day of May, in the year last aforesaid, the said John B. Brown, by C. Marshall, Esq., his attorney, files in court here the following answer and replication, to wit:

To the honorable judges of the circuit court of Baltimore county:

The replication of John B. *Braun*, [Brown,] of Baltimore city, to the petition filed by Peter G. Sauerwein of said county, praying the removal into the U. S. circuit court at Baltimore of a suit instituted and now pending in the said circuit court of Baltimore county, brought by said Brown against the said Sauerwein.

This respondent is advised and respectfully submits that this court cannot now take jurisdiction of the said petition nor grant the motion and relief therein prayed, because he saith that the said petitioner hath not complied with the terms of the statue referred to
29 and relied upon in said petition, to wit, the section of the act of March 3rd, 1863, which requires that the said petition for removal shall be filed "at the time of entering his appearance in said suit." And the said respondent avers (which appears by the record of said cause) that the said petitioner, in point of fact, "entered his appearance to said suit" at a period anterior to the filing of said petition, to wit, on the day of , already past, and because the respondent's suit is not already within the purview and operation of the said act of 3rd March, 1863.

Wherefore for this and other reasons to be assigned at the hearing of the said petition, respondent insists that said petition should be denied and dismissed with costs.

CHARLES MANSFIELD, *For Respondent.*

And afterwards, to wit, on the fifth day of June, in the year last aforesaid, the plaintiff, by his attorney aforesaid, filed in court here the following bill of particulars, to wit:

In the circuit court of Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And the said plaintiff, in answer to the demand of a bill of particulars in the said action, made by the said defendant, comes and files in

court here his bill of particulars with his amended declaration aforesaid, in form following, to wit:

30 Peter G. Sauerwein in acc't with John B Braun, Dr.

1863. November.	To this sum due said plaintiff for money illegally claimed and collected from him by said defendant	$1,800 00
1864. Feb'y.	To this sum due said plaintiff by said defendant for money illegally demanded and collected from said plaintiff by said defendant, acting under color of his office as collector of internal revenue of the United States, and which said plaintiff was compelled to pay to said defendant	$18,973 00

A. B. MAGRUDER,
C. MARSHALL,
A. H. HANDY,
Attorneys for Plaintiff.

Which said bill of particulars is thus endorsed, to wit: "Due service of copy acknowledged. A. S. Ridgely for Deft., June 3rd, 1868."

And on the said day and year last aforesaid, the said plaintiff, by his attorneys aforesaid, files in court here his replication to the 2nd 5th, & 8th, & 9th pleas, in form following, to wit:

Circuit court of Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And the said plaintiff, by his attorneys, for replication to the
31 pleas of said defendant by him secondly and fifthly above pleaded, says, that he ought not to be barred of his aforesaid action thereof against said defendant by anything in said pleas contained, because he says that after the said defendant had received of and from said plaintiff the said several sums of money in the said plaintiff's amended declaration mentioned, in manner and form as therein stated, the said plaintiff did duly appeal from said illegal assessment and collection thereof made by said defendant against and from the said plaintiff, to the Commissioner of Internal Revenue of the United States, according to the provisions of law in that regard, and in conformity to the regulations of the Secretary of the Treasury of the United States, established in pursuance thereof, in order to cause the said moneys, so illegally assessed and collected by said defendant against and from the said plaintiff, to be refunded and paid to the said plaintiff; and the said plaintiff says, that a decision of and upon his said appeal was not made and rendered until on or about the day of Feb-

ruary, in the year eighteen hundred and sixty-eight, at which time it was made known to the said plaintiff that the decision of the said Commissioner of Internal Revenue was against the claim of said plaintiff; and it was considered and ordered by the said Commis-
32 sioner of Internal Revenue that the said several sums of money, or any part thereof, received and collected of and from the said plaintiff by the said defendant, as in said plaintiff's amended declaration set forth, should not be paid and refunded to him by the United States.

And the said plaintiff in fact says, that within six months from and after the said last-mentioned date, and from and after the said decision of the said Commissioner, to wit, on the day of February, in the year eighteen hundred and sixty-eight, the said plaintiff did duly commence his aforesaid action thereof against the said defendant, according to the statue in such case made and provided, and this he is ready to verify; wherefore he prays judgment, &c.

And for replication to the eighth plea of the said defendant above pleaded, the said plaintiff says, precludi non, &c., because he says, he, the said plaintiff, did not fail to make full and true returns of his. the said plaintiff's products and sales of tobacco manufactured by him, the said plaintiff, according to law, as the said defendant, in the said eighth plea, hath alleged; and this he prays may be enquired of by the country, &c.

And for further replication to said eighth plea, the said plaintiff says, that the goods and merchandize of the said plaintiff,
33 seized by the said defendant, as set forth in said eighth plea, were not lawfully seized by the said defendant in manner and form as set forth in said eighth plea; and this he pray s may be enquired of by the country, &c.

And for further replication to the said eighth plea, the said plaintiff says, that the said plaintiff was not duly summoned to appear before the said assessor on the 24th day of November, 1863, to show cause why the merchandise of said plaintiff, mentioned in said eighth plea, should not be forfeited in manner and form as set forth in said plea; and this he prays may be enquired of by the country, &c.

And for further replication to the said eighth plea, the said plaintiff says, that the said manufactured tobacco of said plaintiff was not duly and legally declared forfeited to the United States by the assessor of internal revenue, in manner and form as the said defendant hath thereof alleged in said eighth plea; and this he prays may be enquired by the country, &c.

And for further replication to said eighth plea, the said plaintiff says, that the said seizure, sale, and other acts set forth in said plea as done by said defendant, were not done by said defendant in the lawful and necessary discharge of the duty of said defendant, as collector, as alleged in said eighth plea; and this he prays may be enquired of by the country, &c.

34

A. B. MAGRUDER,
C. MARSHALL,
A. H. HANDY,
Attorneys for Plaintiff.

And for replication to said ninth plea of said defendant, by him above pleaded, the said plaintiff says, precludi non, &c., because he says, that the said assessor, in said ninth plea mentioned, did submit and return to said defendant, according to law, his monthly list of assessments, wherein said plaintiff was assessed, according to law, in the sum, and in manner and form as set forth in said ninth plea; and this he prays may be enquired of by the country, &c.

And for further replication to said ninth plea, the said plaintiff says, precludi non, &c., because he says, that the said defendant was not required by law to collect the said sum of money, in said ninth plea mentioned, from the said plaintiff, in manner and form as alleged and set forth in said plea; and this he prays may be enquired of by the country, &c.

And for a further replication to said ninth plea, the said plaintiff says, he did not voluntarily come forward and pay the said sum of money, in said plea mentioned, in manner and form as therein set forth; and this he prays may be enquired of by the country, &c.

A. B. MAGRUDER,
C. MARSHALL,
A. H. HANDY,
Attorneys for Plaintiff.

35 And also on the day and year last aforesaid, the said plaintiff, by his attorneys as aforesaid, filed in the court here the following demurrer to the 10th and 11th pleas in form following, ito wit:

Circuit court of Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And the said plaintiff, by his attorneys aforesaid, says, that the said tenth and eleventh pleas of the said defendant, by him above pleaded, and the matters in said several pleas contained, are not sufficient in law to bar the said plaintiff from having and maintaining his aforesaid action thereof against said defendant; and this he, the said plaintiff, is ready to verify; wherefore he prays judgment, &c., and his damages as set forth in his amended declaration aforesaid, &c. And the said plaintiff sets forth and assigns the following grounds of demurrer to said tenth and eleventh pleas, to wit:

1. That each and every one of said pleas is in itself insufficient in law to bar each plaintiff's action, in matter of substance and on grounds of general demurrer.

2. That said tenth plea is insufficient besides, on grounds of general demurrer, in this, 1st., that said tenth plea is double and contains several distinct and substantive matters of defense, as

36 alleged, to said plaintiff's amended declaration; 2nd. that it is uncertain and indefinite as to the period of limitation therein set forth and relied on.

A. B. MAGRUDER,
C. MARSHALL,
A. H. HANDY,
Attorneys for Plaintiff.

And afterwards, to wit, on the nineteenth day of June, in the year last aforesaid, the said plaintiff, by his attorneys aforesaid, files in court here the following replication to the 1st, 3rd, 4th, 6th, & 7th pleas, in form following, to wit:

In the circuit court for Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And the said plaintiff, by his attorneys, for replication to the 1st, 6th, & 7th pleas of the defendant, as amended, saith he doth the like.

And the said plaintiff, by his attorneys, for replication to the 3rd & 4th pleas of the defendant, saith that he joins issue upon the same.

MARSHALL & FISHER,
A. B. MAGRUDER,
A. H. HANDY,
WHEELER & KEECH,
Att'ys for Plaintiff.

37 And the petition of the said defendant, together with the answer, &c., having been read and considered, the court here passed in said cause the following order, to wit:

In the circuit court for Baltimore county.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

The petition of Peter G. Sauerwein, the defendant in the above-entitled cause, and the answer thereto having been read and considered, it is, this 30th day of June, A. D. 1868, in compliance with the acts of Congress in such cases made and provided, ordered, that the above-entitled cause be removed for trial to the circuit court of United States for the district of Maryland, and the clerk of the circuit court for Baltimore county is hereby directed to transmit forthwith a transcript of the record of proceedings in the cause to the said circuit court of the United States for the district of Maryland.

GEO. YELLOTT.

And the same is transmitted according.

Test: EDWARD H. ADY, *Clerk.*

38 STATE OF MARYLAND, *Baltimore County, to wit:*

I, Edward H. Ady, clerk of the circuit for Baltimore county, in the State of Maryland, hereby certify that the aforegoing is a full and true transcript taken from the record of proceedings of the said court, in the cause therein mentioned.

In testimony whereof, I hereto set my hand and affix the seal of the court aforesaid, this twenty-fourth day of August, in the year of our Lord one thousand eighte hundred and sixty-eight.

[SEAL'S PLACE.] EDWARD H. ADY,
Clerk of the Circuit Court for Baltimore County.

And now here at this day, to wit, the first Monday of November, in the year 1868, come into the circuit court here the said John B. Braun, by Charles Marshall, Alexander H. Handy, and Allan B. Magruder, esquires, his attorneys, and the said Peter G. Sauerwein, by Arthur W. Machen, Andrew Steritt Ridgely, and Richard I. Gittings, esquires, his attorneys.

And now here, to wit, on the 19th day of November, in the year of our Lord 1868, the said Peter G. Sauerwein, by his attorneys aforesaid, files in court here the following rejoinders, to wit:

39 In the circuit court of the United States for the district of Maryland.

JOHN H. BRAUN
vs.
PETER G. SAUERWEIN.

And the said defendant, by way of plea to the replication of the said plaintiff, by him pleaded to the 2nd and 5th pleas of the defendant aforesaid, saith that the said plaintiff did not duly appeal to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, in respect of the said several sums of money by the plaintiff in his declaration alleged to have been illegally collected from him by the said defendant in manner and form as the plaintiff in his said replication has alleged; and of this the said defendant puts himself upon the country, &c.

RIDGELY, GITTINGS & MACHEN,
For D'f't.

And the said plaintiff doth the like.

MARSHALL, MAGRUDER & HANDY,
For Pl'ff.

And the said defendant, for rejoinder to the replication of the said plaintiff by him above pleaded to the pleas of the said defendant secondly and fifthly above pleaded to the several counts of
40 the plaintiff's said amended declaration aforesaid mentioned, were, by the said defendant, had and received from the plaintiff on the second day of February, in the year 1864, and not afterwards; and the said appeal of the said plaintiff in his said replication mentioned was made and taken on the 20th day of August, in the year 1867, and not before; and the said decision of the said Commissioner was made and rendered on the 11th day of January, in the year 1868, and at no later or other time. And this the said defendant is ready to verify.

And the said defendant, as to the said last-mentioned replication of the said plaintiff, pleaded as aforesaid to the 2nd and 5th pleas of the said defendant to the said amended declaration, further saith that the said Commissioner did not make or render, and hath not made or rendered, his decision upon the said appeal of the said plaintiff in manner and form as the said plaintiff in his said replication hath averred. And of this the said defendant puts himself upon the country, &c.

And as to the said last-mentioned replication by the said plaintiff above pleaded to the said pleas of the said defendant secondly and fifthly above pleaded to the said amended delcaration, further saith the said plaintiff did not commence his aforesaid action against the said defendant within six months from and after a decision of
41 the said Commissioner upon the matters and the appeal aforesaid in manner and form as the plaintiff in his said replication has averred. And of this the said defendant puts himself upon the country, &c.

And as to the said last-mentioned replication of the said plaintiff the said defendant further saith that the said Commissioner did not consider or order upon said appeal that the said several sums of money received and collected of and from the said plaintiff by the said defendant, as in said plaintiff's amended declaration set forth, should not be paid and refunded to him by the United States in manner and form as the said plaintiff in his said replication has averred. And of this the said defendant puts himself upon the country, &c.

AND. STERITT RIDGELY,
RICH'D I. GITTINGS,
ARTHUR MACHEN,
For D'f't.

And the said defendant, as to the said replication of the said plaintiff by him firstly above pleaded to the ninth plea of the said defendant, and which the said plaintiff hath prayed may be enquired of by the country, doth the like.

And the said defendant, as to the said replication of the said plaintiff by him secondly above pleaded to the ninth plea of the said defendant, saith that the same and the matters therein contained in manner and form as the same are above pleaded and set forth,
42 are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant; that the said defendant is not bound by law to answer the same; and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And the said defendant, according to the form of the statue in such case made & provided, states & shows to the court here the

following causes of demurrer in law to the said replication, that is to say:

(1.) That the said replication attempts and purports to make an issue of law for the determination of the jury.

(2.) That the said replication tenders an immaterial issue.

(3.) That the issue thereby tendered is uncertain and double.

(4.) That the said replication is, in other respects, uncertain, informal, and insufficient.

And the said defendant, as to the replication of the said plaintiff by him thirdly above pleaded to the ninth plea of the said defendant, saith that the said sum of money and sums of money, in
43 the declaration mentioned, was and were demanded by the defendant, being then and there collector as aforesaid, in the name and for the use of the United States, as and for the money due from the said plaintiff upon the said assessment of the said assessor, and the said monthly list furnished by him, the said assessor, to the said defendant; and the said plaintiff, upon and under the said demand, paid the said money to the said defendant for the use of the United States, and said money was by the said defendant, being then and there collector as aforesaid, paid over into the treasury of the United States, which is the same payment of money by the said plaintiff to the said defendant, and receipt thereof by the said defendant mentioned in the said declaration and ninth plea aforesaid. And this the said defendant is ready to verify.

A. STERETT RIDGELY.
R. I. GITTINGS.
A. W. MACHEN,
Defendant's Attorneys.

And on the said 19th day of November, in the year of our Lord 1868, the said Peter G. Sauerwein, by his attorneys aforesaid, filed in the circuit court the following similitur, to wit:

In the circuit court of the United States for the district of Maryland.

BRAUN
vs.
SAUERWEIN.

44 MR. CHEW: Enter a similiter to the plaintiff's 1st, 2nd, 3rd, 4th, and 5th replications to the defendant's 8th plea, and a joinder in demurrer on the plaintiff's demurrer to the defendant's 10th and 11th pleas.

RIDGELY & MACHEN, *For D'f't.*

And now here, at this day, to wit, the 20th day of November, in the year of our Lord 1868, the said John B. Braun, by his said attorneys, files in the circuit court here the following withdrawal of the second replication to the 9th plea, to wit:

U. S. c. ct.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

The plaintiff, by leave of court first had and obtained, withdraws the second replication to the 9th plea of the defendant, to which the said defendant hath demurred.

PECK, HANDY & MAGRUDER,
For Pl'ff.

And on the said 20th day of November, in the year of our Lord 1868, the said John B. Braun, by his attorneys aforesaid, files
45 in court here the following demurrer and joinder, to wit:

In the circuit court of the United States for the district of Maryland.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And the said plaintiff says that the rejoinder of the said defendant secondly above pleaded to the replication of said plaintiff to the pleas of said defendant, secondly and fifthly pleaded to the said plaintiff's amended declaration, is not sufficient in law to bar the said plaintiff from having and maintaining his aforesaid action in said amended declaration, and that he, the said plaintiff, is not bound in law to answer the same; and this the said plaintiff is ready to verify. Wherefore he prays judgment by reason of the insufficiency of said rejoinder, &c.

And the said plaintiff shows to the court and sets forth the following grounds of demurrer to said rejoinder, to wit:

First. Said rejoinder contains and shows no answer in law sufficient to bar said plaintiff from having and maintaining his aforesaid action.

Second. Said rejoinder contains and shows no sufficient answer or bar in law to the said replication of said plaintiff.

CHARLES MARSHALL,
A. B. MAGRUDER, &
A. H. HANDY,
Att'ys for Plaintiff.

46 And on the said 20th day of November, in the year of our Lord 1868, the said John B. Braun, by his attorneys aforesaid, files in court here the following joinder of issue, to wit:

In the circuit court of the United States for the district of Maryland.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

And as to the rejoinder of the said defendant to the replications of the said plaintiff to the second and fifth pleas of said defendant

to the amended declaration aforesaid, in which said rejoinder the said defendant hath put himself upon the country, the said plaintiff doth the like.

MARSHALL, MAGRUDER & HANDY,
For Pl'ff.

And on the said 20th day of November, in the year of our Lord 1868, the said John B. Braun, by his attorneys aforesaid, files in the circuit court here the following demurrer to rejoinder to 3rd replication to 9th plea, to wit:

In the circuit court of the United States for the district of Maryland

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

47 And as to the rejoinder of said defendant by him thirdly above pleaded to the third replication to the defendant's ninth plea, the [the] said plaintiff, by his said attorneys, says that the said rejoinder is not sufficient in law to bar the said plaintiff from his action thereof against said defendant; and this he is ready to verify. Wherefore he prays judgment, &c.

And for cause of demurrer to said rejoinder, the said plaintiff shews to the court here the following, to wit:

1. That said third rejoinder to the said third replication of said plaintiff to the said ninth plea of said defendant, in which said replication the said plaintiff prayed that the matters & things therein mentioned might be enquired of by the country, is not an acceptance of the issue so tendered by said plaintiff, nor a demurrer to said replication, but is an allegation of the same matters before pleaded by said defendant in said ninth plea.

2. Said rejoinder alleges and sets forth new matter in answer to the said third replication, when said replication concludes to the country.

And said rejoinder is in other respects uncertain, informal, & insufficient.

CHARLES MARSHALL,
A. B. MAGRUDER,
A. H. HANDY,
Att'ys for Pl'ff.

48 And on the said 20th day of November, in the year of our Lord 1868, the said Peter G. Sauerwein, by his attorneys aforesaid, files in court here, the following additional plea, to wit:

In the circuit court of the United States for the district of Maryland.

JOHN B. BRAUN
vs.
PETER G. SAUERWEIN.

12. And for a 12th plea to the said amended declaration of the plaintiff, and to each of the counts thereof, the defendant, by his said

attorneys, says, (by leave of the court in this behalf first had and obtained,) that at and during throughout the month of December, in the year 1863, and for a long time previously and subsequent to said month, and until long after the 20th day of January, in the year 1864, a certain William E. Beale was and, through all the period aforesaid, continued to the United States assessor for the 3rd assessment and collection district of Maryland, duly nominated, and by and with the advice and consent of the Senate, by the President of the United States appointed to said office, and at the several days and times, and during all the periods of time aforesaid, the said defendant was United States collector of internal revenue for said collection district, duly appointed, and the said Beade being so assessor, and the said defendant, so collector, the said Beale did, in due time, after the expiration of the said month of December, of the year 1863 aforesaid, to wit, on the 20th of January, in the
49 year 1864, at the assessment and collection district aforesaid, make out a certain monthly list, containing the assessments, made in the said month of December, in the said district, and the sums payable according to the provisions of the act of Congress, entitled "An act to provide internal revenue to support the government and pay the interest on the public debt," approved July 1st, 1862, assessed in and during said month of December, in said district, upon manufactures and other things required by law to be assessed and put into said monthly list, and on the said 20th day of January, A. D. 1864, the same being the time when the said list was lawfully returnable, the said Beale, being then and there assessor as aforesaid, did furnish to the said defendant, and the said defendant, being then and there collector as aforesaid, did receive from the said assessor said monthly list for the said month of December, under and according to the provisions of the said act of Congress in such case provided, and according to the lawful instructions and regulations of the Commissioner of Internal Revenue, appointed under said act, and the said defendant did therefore subscribe three receipts for said list, one of the same being given on a full and correct copy of said list, which said copy was by the said defendant therefore delivered to the said Beale, assessor as aforesaid, and the other two of said receipts being given on an aggregate statements of the said list exhibiting the gross amount of taxes to be collected in said
50 collection district, and one of which aggregate statements and receipts was thereupon transmitted to the Commissioner of Internal Revenue, and the other thereof to the First Comptroller of the Treasury; whereupon it became and was the duty of the said defendant to demand and collect the said sums of money or duties from the persons against whom they stood assessed in said list; and the said plaintiff in and during the said month of December, A. D. 1863, and for a long period of time theretofore, to wit, from the first day of September, A. D. 1862, was and through all the period of time from the first day of September, A. D. 1862, aforesaid, to the end of the said month of December, continued to be a manufacturer of tobacco, in the collection district aforesaid, liable to assessment on to-

bacco by him manufactured, to wit, on smoking tobacco and chewing tobacco; and in the said monthly list of the said assessor for the month of December, A. D. 1863, furnished to the said defendant on the 20th day of January, A. D. 1864, as aforesaid, the said plaintiff, by the name of H. Wilkens & Co., was assessed as such manufacturer in the sum of eighteen thousand nine hundred and seventy-three dollars and five cents; whereupon the said defendant did thereupon, as such collector, demand the same sum of the said plaintiff lawfully due to the United States under
51 said assessment, and the plaintiff upon said demand did accordingly pay the same to this defendant in his collection district aforesaid for the use of the United States, the said defendant being then and there collector as aforesaid, and the said defendant did thereupon duly pay over the said sum of money so by him received from the plaintiff into the Treasury of the United States, in compliance with the regulations and requirements of the Commissioner of Interval Revenue in that behalf, and according to the provisions of the said act of Congress. And the said sum of $18,973 05, so by the said defendant demanded and received from the said plaintiff upon the said assessment and monthly list, is the same money mentioned in the several counts of the declaration, and is the same money which, in the said first count of the declaration, is alleged to have been had and received by the defendant of and from the plaintiff, without this that the said defendant had or received any money or moneys from the said plaintiff for his use, or which the said defendant became liable to pay to the said plaintiff in manner and form as the plaintiff in his said declaration has averred. And this the said defendant is ready to verify.

RIDGELY & GITTINGS & MACHEN,
For Def't.

52 And on the said 20th day of November, in the year of our Lord 1868, the said John B. Braun, by his said attorneys, files in court here the following replication to the additional plea, to wit:

C. ct. U. S., Md. district.

BRAUN
vs.
SAUERWEIN.

And for replication to the 12th plea by the defendant above pleaded, the said plaintiff says precludi non, &c., because he says that the said assessment so furnished by said assessor to said defendant as in said plea alleged, was not as to said plaintiff, or as to the said plaintiff by the name of H. Wilkens & Co., assessed in due form of law, but that the same was as to said plaintiff assessed and furnished to the said defendant without authority of law. And this the said pl'ff is ready to verify. Wherefore he prays judgment whether he ought to be precluded from having or maintaining his said action by reason of anything in said plea contained.

2. And for a second replication to said twelfth plea, the said plaintiff, by his said attorneys, says that in the said list so furnished by the said assessor to said defendant as in said plea alleged, the said plaintiff was not, by the name of H. Wilkens & Co., or by any other name, lawfully assessed in the said sum of $18,973 05-100
53 for taxes due and owing by him during the period in said plea mentioned. And of this the said plaintiff is ready to verify. Wherefore he prays judgment, &c.

And for a third replication to said 12th plea, the said plaintiff says precludi non, &c., because he says that during the period in said plea mentioned he was a manufacturer of tobacco in said collection district as in said plea alleged, and that during the time in said plea mentioned, he did, as such manufacturer, make regular and legal returns of his property and of the sales thereof liable to taxation under said law of the United States, and the amount of taxes lawfully due and payable by him as such manufacturer were regularly assessed against and paid by him for and during said period as and when the same were and became lawfully due and payable under said law.

And the plaintiff further says that on the said 20th day of January, 1864, when the said monthly list of the said assessor for the month of December, 1863, was furnished to said defendant by said assessor as alleged in said plea, the said plaintiff was not indebted nor liable to pay to the United States, nor to said defendant as collector of said district, any sum for taxes from the said first day of September, 1862, to the end of said month of December,
54 1863, nor for any part of said period as alleged in said plea.

And the said plaintiff further says that notwithstanding he had so paid all the taxes lawfully due and payable by him as such manufacturer of tobacco and cigars, and for and on account of the sales thereof, to the United States for and during said period, the said defendant did under color of his said office, and under color of a false and illegal list of taxes for said period furnished to him, the said defendant, by said assessor, unlawfully and illegally, and by force and compulsion used against him, the said plaintiff, and against his property, exact from and compel the said plaintiff to pay by such force and compulsion, and against his will, and without his power to prevent the same, the said sum of $18,793 05-100, pretending that the same was lawfully due for taxes by the said plaintiff to the United States under said law, as such manufacturer for and during said period, and for and on account of his said business and property and the sales thereof, when the same was not in fact so due and payable. Without this that said plaintiff did pay said sum upon the demand of said defendant as by him in said 12th plea alleged. And this the said plaintiff is ready to verify. Wherefore he prays judgment whether he ought to be precluded from having his said action
55 by reason of anything in said plea contained.

CHARLES MARSHALL,
A. B MAGRUDER,
A. H. HANDY,
Att'ys for Plaintiff.

Whereupon the court now here having seen and fully understood all and singular the premises aforesaid, and having maturely deliberated thereupon, it appears to the court here that the said tenth and eleventh pleas by the said Peter G. Sauerwein above pleaded and the matters therein contained, are sufficient in law to bar and preclude the said John B. Braun from having and maintaining his said action against him, the said Peter G. Sauerwein, and that the said second and fifth pleas above pleaded by the said Peter G. Sauerwein, in manner and form aforesaid, and the matters therein contained, are good and sufficient in law to bar the said John B. Braun from having his said action against the said Peter G. Sauerwein.

It is therefore considered by the court here that the said John B. Braun take nothing by his writ aforesaid, but that he for his false clamor, &c., be in mercy, &c., and that the said Peter G.
56 Sauerwein go thereof without day, &c. And it is also considered by the court here that the said Peter G. Sauerwein recover against the said John B. Braun the sum of by the court unto him adjudged for his costs and charges by him about his defense in this behalf laid out and expended; and that he have thereof his execution, and so forth.

MEMORANDUM.—1868, November 21. Plaintiff's demurrer sustained to the 10th and 11th pleas of defendant, and the demurrer to the rejoinder to the 1st replication to the 2nd and 5th pleas of defendant is overruled and judgment for defendant under his 2nd and 5th pleas.

And on the said 21st day of November, in the year of our Lord 1868, the said John B. Braun, by his attorneys aforesaid, filed in court here the following motion, to wit:

In the circuit court of the United States, Maryland district.

BRAUN
vs.
SAUERWEIN.

The plaintiff, by his counsel, moves the court to decline to entertain jurisdiction of the suit, and to remit the parties to the said circuit court for Baltimore county, for the reason that said suit hath been improperly removed from said circuit court for Baltimore county.

57 HANDY, PECK, MAGRUDER, MARSHALL,
For Pl'ff.

And afterwards, to wit, on the third day of February, in the year of our Lord 1869, and all and singular the premises being seen, heard, and, by the court here, fully understood, it is ordered by the court here that the said motion be and the same is overruled.

And now here, at this day, to wit, the sixth day of February in the year of our Lord 1869, the said John B. Braun, by Charles Marshall and Robert I. Brent, esquires, his attorneys, produced to the said circuit court here the writ of the said United States of America, for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as

aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in words and of the tenor following, to wit:

58

59 THE UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the circuit court of the United States for the fourth circuit in and for the district of Maryland, greeting:

Because on the record and proceedings, as well on the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between John B. Braun, plaintiff, and Peter G. Sauerwein, defendant, a manifest error hath happened, to the great damage of the said John B. Baun, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then, under your seal, destinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Su-

60 preme Court may cause further to be done therein to correct that error, what of right, and according to to the laws and customs of the United States, should be done.

Witness the Honorable S. P. Chase, Chief Justice of the said Supreme Court, the first Monday of December in the year of our Lord one thousand eight hundred and sixty-eight.

Issued 6th day of February, 1869.

JAS. W. CHEW,
Clerk. Circuit Court.

61 The United States of America to Peter G. Sauerwein, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for Maryland district, wherein John B. Braun is plaintiff in error, and you are defendant in error, to shew cause if any there be, why the judgment against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand and seal this sixth day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] WILLIAM F. GILES.

I acknowledge notice of the above citation, this 6th day of February, 1869.

AND'W STERETT RIDGELY,
For Defendant.

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63 In pursuance whereof, and according to the form and effect of the act of Congress in such case made and provided, the transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court accordingly.

Writ of error bond.—Filed 6th February, 1869.

Know all men by these presents, that we, John B. Braun and William Kniss, are held and firmly bound unto Peter G. Sauerwein in the sum of three hundred dollars, lawful money, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this sixth day of February, eighteen hundred and sixty-nine.

Whereas, lately, at a circuit court of the United States sitting for the dist. of Maryland, in a suit pending in the said court, wherein John B. Braun was plaintiff, & the said Peter G. Sauerwein was defendant, judgment was rendered against the said Braun, & he
64 having sued out a writ of error to the Supreme Court of the United States: Now, the condition of the above obligation is such, that if the said John B. Braun shall prosecute his writ of error with effect, & answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise, to be and remain in full force and virtue in law.

[SEAL.] JOHN B. BRAUN.
[SEAL.] WM. KNISS.

Signed, sealed, and delivered in presence of—
R. I. BRENT.

Which said bond is thus endorsed, to wit:

"Bond approved 6th February, 1869.
"WILLIAM F. GILES."

In testimony that the foregoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereto subscribe my name and affix the seal of the said circuit court this 23rd day of February, in the year of our Lord one thousand eight hundred and sixty-nine.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

In the Supreme Court of the United States.

DECEMBER TERM, 1859.

JOHN H. BRAUN, *Plaintiff in Error*,
vs.
PETER G. SAUNDERS.

No. 214.

In error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR THE DEFENDANT IN ERROR.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

JOHN B. BRAUN, *Plaintiff in Error*,
vs.
PETER G. SAUERWEIN. } No. 214.

In error to the Circuit Court of the United States for the District of Maryland.

BRIEF FOR THE DEFENDANT IN ERROR.

STATEMENT.

This is an action brought by the plaintiff in error to recover the sum of $20,773 alleged to have been illegally exacted and collected, as for internal revenue duties, by the defendant in error, under color of his office as collector of internal revenue for the third collection district of Maryland.

The suit was originally instituted in the circuit court for Baltimore county, Maryland, on the 18th of February, 1868, whereupon the defendant duly appeared and pleaded to the declaration then filed. (Printed record, pp. 2 to 7.) But afterwards the plaintiff put in an amended declaration, to which the defendant also pleaded. (*Ibid*, pp. 7 to 12.) At the same time the latter filed a petition in said court for the removal of the cause to the circuit court of the United States for the district of Maryland, under the 5th section of the

act of March 3, 1863, (12 Stat., 756,) which was excepted to by the plaintiff; but the exception was overruled, and an order passed for the removal of the cause to the last-mentioned court, from which it has been brought to this court by writ of error. (*Ibid.*, pp. 12 to 14, and 18.)

In the first count of his amended declaration the plaintiff complains "that whereas heretofore, to wit, on the day of February, in the year 1864, the said plaintiff owned and had in his possession a large and valuable tobacco storehouse and factory of tobacco, situate at No. 181 West Pratt street, in said city, (Baltimore,) of great value, to wit, etc.; and in and upon said premises the said plaintiff had, as his own property, a large amount of tobacco, to wit, etc., and divers and various articles of furniture of his said trade and business, and of tools and utensils, and of books, papers, and accounts appertaining to the same, of great value, to wit, etc.; and whereas afterwards, to wit, on the day and year aforesaid, the said defendant, then holding the office of collector of internal revenue of the United States of America, in and for the third district of said State of Maryland, in which was included the said city of Baltimore, not regarding his duty as such collector, and under color of his office as such collector, wrongfully, illegally, and oppressively had, received, seized, and took into his possession, and from the said plaintiff, the said storehouse and the said goods, chattels, and effects of said plaintiff, under the color and pretext that the said plaintiff and his said property, goods, chattels, and effects were justly liable and due to the

United States in a large sum of money, to wit, etc., for and on account of the aforesaid business and trade, and stock of goods, wares, merchandise, and effects of said plaintiff, and for and on account of divers penalties, taxes, and dues alleged and pretended by said defendant to be then and there due and owing by said plaintiff to the United States, for and on account of divers liabilities and violations of law pretended by said defendant to have been suffered and committed by said plaintiff against the revenue laws of the United States in and about the business of said plaintiff, when, in truth and in fact, neither the said plaintiff nor his goods, chattels, effects, and property were in anywise liable to the payment of the said sum of money demanded of him as aforesaid; and the said plaintiff in fact says, that, by reason of the demand of the said sum of money of him by said defendant, and by reason of the aforesaid illegal and oppressive acts of said defendant, the said plaintiff was then and there compelled to pay, and did pay, to said defendant a large sum of money, to wit, etc., which said sum was then and there had and received by said defendant of and from the said plaintiff; by reason whereof the said defendant then and there became liable," etc. This is followed by the common counts for money had and received, etc. (*Ibid.*, pp. 7 to 9.) And subsequently, on the demand of the defendant, a bill of particulars was filed by plaintiff setting forth specifically the amounts claimed, (*ibid.*, pp. 14, 15,) which make in the aggregate the sum above mentioned.

To the amended declaration of plaintiff the defendant

filed twelve separate pleas, (*ibid.*, pp. 9 to 12, and 18,) the second and fifth of which set up in bar the statute of limitations of the State of Maryland for *three* years, and the tenth and eleventh interposed a limitation for *two* years, probably under the 7th section of the aforesaid act of March 3, 1863. Replications were made to all the pleas, except the tenth and eleventh, some of which joined issue, others tendered issue, and others concluded with a verification. The tenth and eleventh pleas were demurred to, and the demurrer sustained. (*Ibid.*, pp. 15 to 18, and 25 to 27.) The replication to the second and fifth pleas, which is the only one that need be specially noticed here, is as follows:

"And the said plaintiff, etc., says that he ought not to be barred of his aforesaid action, etc., because he says that after the said defendant had received of and from said plaintiff the said several sums of money in the said plaintiff's amended declaration mentioned, in manner and form as therein stated, the said plaintiff did duly appeal from said illegal assessment and collection thereof, made by said defendant against and from the said plaintiff, to the Commissioner of Internal Revenue of the United States, according to the provisions of law in that regard, and in conformity to the regulations of the Secretary of the Treasury of the United States established in pursuance thereof, in order to cause the said moneys, so illegally assessed and collected by said defendant against and from the said plaintiff, to be refunded and paid to the said plaintiff; and the said plaintiff says that a decision of and upon his said appeal was not made and rendered until on or about the day of February, in the year 1868, at which time it was made known to the said plaintiff that the decision of the said Commissioner of Internal Revenue was against the claim of said plaintiff; and it was considered and ordered by the said Commissioner of Internal Revenue

that the said several sums of money, or any part thereof, received and collected of and from the said plaintiff by the said defendant, as in said plaintiff's amended declaration set forth, should not be paid and refunded to him by the United States. And the said plaintiff in fact says, that within six months from and after the said last-mentioned date, and from and after the said decision of the said Commissioner, to wit, on the day of February, in the year 1868, the said plaintiff did duly commence his aforesaid action thereof against the said defendant, according to the statute in such case made and provided, and this he is ready to verify; wherefore he prays judgment," etc. (*Ibid.*, pp. 15, 16.)

The cause being now removed into the circuit court of the United States, the defendant filed therein a rejoinder that [the several sums of money in the plaintiff's amended declaration mentioned] "were by the said defendant had and received from the plaintiff on the 2d day of February, in the year 1864, and not afterwards; and the said appeal of the said plaintiff, in his said replication mentioned, was made and taken on the 20th day of August, in the year 1867, and not before; and the said decision of the said Commissioner was made and rendered on the 11th day of January, in the year 1868, and at no later or other time; and this the said defendant is ready to verify," etc. (*Ibid.*, pp. 19, 20.)

To this the plaintiff demurred, but the demurrer was overruled and judgment given for the defendant under his second and fifth pleas. (*Ibid*, pp. 22, 27.)

Thereupon the plaintiff moved the court to remit the parties to the said circuit court for Baltimore county, for the reason that the suit had been improperly removed therefrom; but the motion was overruled. (*Ibid.*, p. 27.)

ARGUMENT.

I. The record shows no formal joinder in demurrer, but this not a matter of error. There was an actual joinder, and the omission, at this stage of the case, is immaterial.

Com. Dig. Pleader, Q. 3.

Wilcox *vs.* Wood, 3 Scam., (Ill.,) 51.

McCracken *vs.* West, 17 Ohio, 16.

II. The defendant was sued in trespass for an act done under an act of Congress, during the rebellion. His case, therefore, comes precisely within the acts of 1863 and 1866, (12 Stats. at Large, 756; 14 *Ibid.*, 46.) for the removal of such action to the United States circuit court, and the action was therefore rightly removed to that court.

See Bigelow *vs.* Forrest, 9 Wallace, 339;

Fisk *vs.* Union Pacific Railroad Co., 6 Blatchf. C. C., 362.

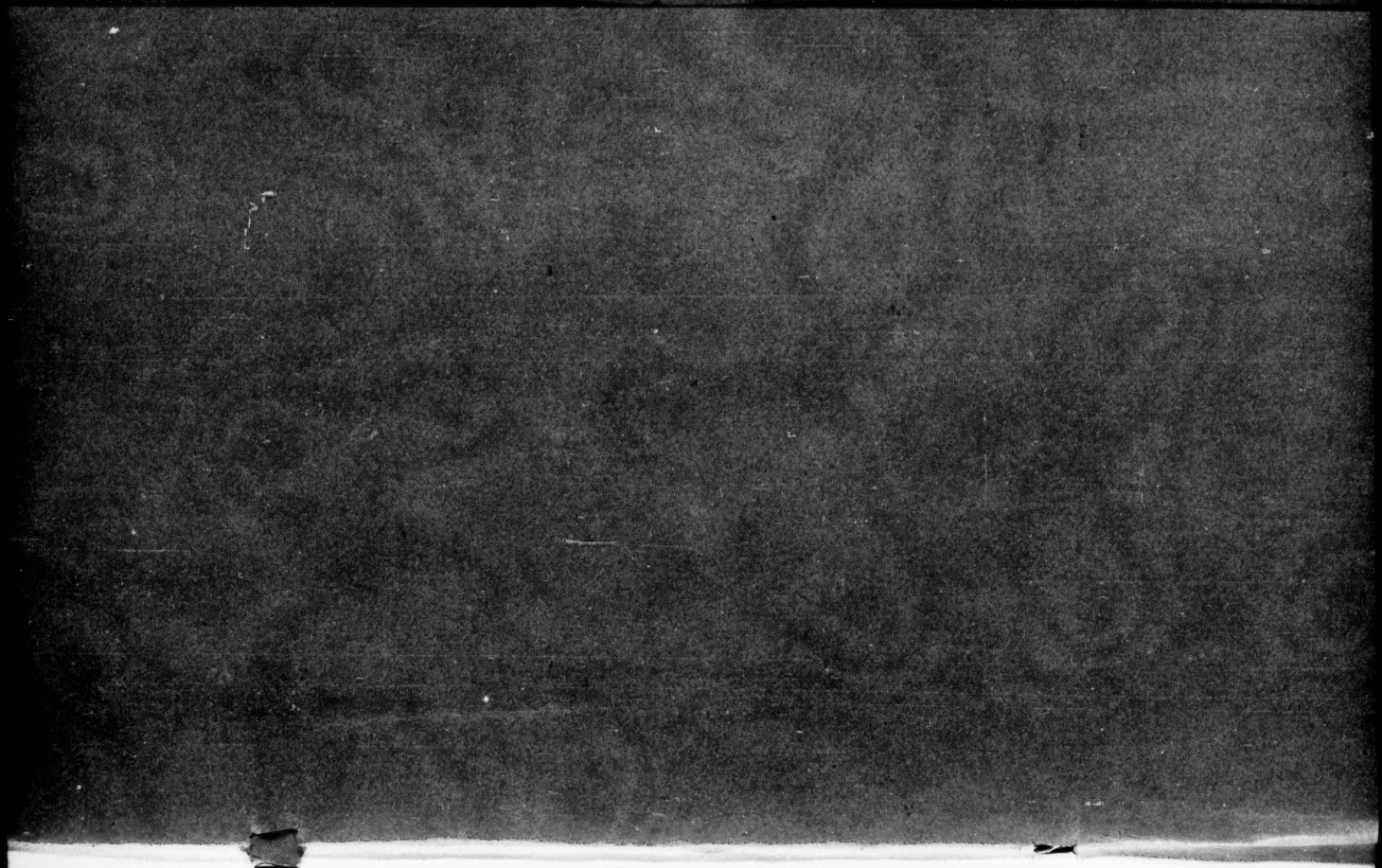
III. The main question in the case arises on the defendant's plea of the Maryland statute of limitations of three years. The facts are these: The cause of action accrued February 2, 1864. Two years and six months of the three years had expired when, by statute of July 13, 1866, Congress enacted "that no suit shall be maintained in any court for the recovery of any tax alleged to have been erroneously or illegally assessed or col-

lected, until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of said Commissioner shall be had thereon, unless such suit shall be brought within six months from the time of said decision, or within six months from the time this act takes effect: *Provided*, that if said decision shall be delayed more than six months from the date of such appeal, then said suit may be brought at any time within twelve months from the date of such appeal." (14 Stats. at Large, 152.) This act took effect August 1, 1866.

Now, the plaintiff can in no way bring himself within the terms of this statute. Under the regulations of the Secretary of the Treasury of February 26, 1866, in force when this act took effect, the time for appeals was limited to six months; under the regulations of November 23, 1866, the same limitation was imposed. Under the regulation of February 1, 1864, in force when the cause of action accrued, the limitation was three months. The plaintiff had lost his right to appeal before the statute of 1866 was enacted. If that statute gave him six months in which to appeal, he did not take advantage of it; for he did not appeal until more than a year after it took effect, namely, till August 20, 1867. He thus by his own laches lost any right he might have under the statute. The fact that the Commissioner of Internal Revenue entertained the appeal cannot affect the legal rights of the parties. The Commissioner had no authority to disregard the regulations of the Secre-

tary of the Treasury, or by his action to reinstate parties in rights which, under those regulations, they had lost. The plaintiff's right of action was barred by the statute of limitations before he took any step towards making that appeal, which was an essential prerequisite to the maintenance of his action. It was therefore lost.

The result is the same if the act of July 13, 1863, is susceptible of another construction, namely, that "no suit shall be maintained," etc., "until appeal shall have been duly made," etc., "*unless* such suit shall be brought within six months from the time of said decision, [*i. e.*, the assessment, the decision appealed from,] or within six months from the time this act takes effect." No appeal was taken until three years and a half after the tax was assessed and paid, and no suit was brought until more than a year and a half after the act took effect. Even if the statute of limitations was suspended for a year from August 1, 1866, it began to run again August 1, 1867, and the suit was barred February 1, 1868. This suit was not commenced until February 18, 1868.

See Hanger *vs.* Abbott, 6 Wallace, 532, and cases cited.

C. H. HILL,
Assistant Attorney General.